IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

Crl.MC.No. 1732 of 2007()

CRIME NO.317 OF 2000 OF ANTHIKAD POLICE STATIONBY

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PETITIONER:

BINESH.K.G., S/O.GOVINDAN,
KIZHAKOTTU HOUSE, PONGANAKADU,
KURICHYKARA P.O., THRISSUR.

BY ADV. SMT.A.R.USHA
SRI.V.EAPEN MATHAI

RESPONDENTS:

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1. C.I. OF POLICE, WEST POLICE STATION,
THRISSUR.

2. STATE OF KERALA, REPRESENTED BY
SECRETARY HOME, THIRUVANANTHAPURAM.

3. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1732 of 2007

Dated this the 30th day of May, 2007

ORDER

The petitioner is the 7th accused and he faces indictment in a prosecution for offences punishable, inter alia, under Section 302 I.P.C. The petitioner was not available for trial. The co-accused have already faced trial. Some of them have already been found guilty, convicted and sentenced. Some of them have been found not guilty and acquitted. The petitioner has already appeared before the learned Magistrate. It is now submitted that the case has already been committed to the Court of Session. The Court of Session is now seized of the matter. Date for appearance has not been notified. The petitioner, in these circumstances, has come to this Court with a prayer that the charge against him may be quashed.

2. What is the reason ? The learned counsel for the petitioner submits that the petitioner's position is very pitiable. He is not in any way involved in the crime. He is not in any way connected with the crime. For the mere reason that he had travelled prior to the crime in the vehicle, in which the alleged miscreants were proceeding, he has been proceeded against. In these circumstances, it is prayed that invoking the powers under Section 482 Cr.P.C, proceedings against the petitioner may be quashed.

3. I have been taken through the relevant materials. I am certainly of the opinion that this is not a fit case where this Court can undertake the consideration whether sufficient materials are collected by the Investigator to justify the filing of a final report against the petitioner. The Sessions Court is seized of the matter. The petitioner did not appear in proper time and in these circumstances the case against him has been split up. The petitioner must wait to raise his contention before the learned Magistrate and claim discharge under Section 227/228 Cr.P.C.

4. The Code provides for premature termination of unjust and undeserved prosecutions and ordinarily and normally an accused, to claim premature termination of proceedings, must resort to the provisions of the Code. The mere fact that he may be entitled for discharge or acquittal subsequently is certainly no ground for this Court to invoke the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C.

5. In the facts and circumstances of this case, I am satisfied that the petitioner must be directed to wait and stake claim for discharge before the Sessions Court at the stage of Section 227/228 Cr.P.C.

6. The learned counsel for the petitioner submits that the petitioner is employed abroad and unless the plea for discharge is

considered emergently, it will cause great hardship and prejudice to the petitioner. It is for the petitioner to move the learned Sessions Judge with the said request. I have no reason to assume that the learned Sessions Judge would not consider the said request favourably. In case the petitioner is not able to get the question of discharge considered and decided, it is open to him to apply before the learned Sessions Judge for permission to be represented by counsel until the plea of discharge is decided. Necessary application to this effect shall be placed before the learned Sessions Judge narrating all the circumstances. Appropriate orders shall be passed by the learned Judge. With the above observations, this Crl.M.C is, dismissed. I may however hasten to observe that this Court expects the learned Sessions Judge to consider the plea for discharge as expeditiously as possible.

(R.BASANT, JUDGE)

rtr/-